

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

August 7, 1986

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. WEST 84-26-M
 :
COTTER CORPORATION :

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), Commission Administrative Law Judge John A. Carlson concluded that Cotter Corporation ("Cotter") violated 30 C.F.R. § 57.18-25 (1984), a mandatory metal-nonmetal underground safety standard providing:

No employee shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless his cries for help can be heard or he can be seen,

7 FMSHRC 360 (March 1985) (ALJ). 1/ For the following reasons, we reverse.

Cotter's Schwartzwald Mine is an underground uranium mining operation located in Jefferson County, Colorado. On October 6, 1984, Pete Redmond, a Cotter shift boss, assigned three miners to work in stopes 17-3 and 17-4 of the mine. (Stopes are excavated areas from which ore is mined in a series of steps.) The work crew consisted of Romolo Lopez, Paul Herrera and Bobby Varela. Because Lopez's partner had not reported for work that day, Redmond instructed Herrera to "bounce back and forth" between Lopez and Varela. Lopez was assigned to stope 17-3 and Varela was assigned to stope 17-4. The distance between stopes 17-3 and 17-4 was approximately 50-60 feet. In order to move from one stope to another, it was necessary to climb down a ladderway, walk 50-60 feet and then climb up another ladderway.

1/ Following the Secretary of Labor's revision of the metal-nonmetal standards in January 1985, this standard now is found unchanged at 30 C.F.R. § 57.18025 (1985).